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SENATE FILE 145

COMMERCE

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Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to consumer credit by creating the refund
2 anticipation loan Act and providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 145
COMMERCE

1 Section 1. NEW SECTION. 537C.1 TITLE.

2 This chapter shall be known and may be cited as the "Iowa
3 Refund Anticipation Loan Act".

4 Sec. 2. NEW SECTION. 537C.2 PURPOSE -- CONSTRUCTION.

5 The purpose of this chapter is to protect consumers who
6 enter into refund anticipation loans and refund anticipation
7 check transactions and to limit fees for refund anticipation
8 loans facilitated in this state.

9 This chapter is to be construed as a consumer protection
10 statute for all purposes. This chapter shall be liberally
11 construed to effectuate its purpose.

12 Sec. 3. NEW SECTION. 537C.3 COMPLIANCE REQUIRED.

13 A person shall not, individually or in conjunction or
14 cooperation with another person, solicit the execution of,
15 process, receive, or accept an application or agreement for a
16 refund anticipation loan or refund anticipation check, or in
17 any other manner facilitate the making of a refund
18 anticipation loan or refund anticipation check unless the
19 person has complied with this chapter. The provisions of this
20 chapter apply to any person who seeks to evade its
21 applicability by any device, subterfuge, or pretense
22 whatsoever.

23 Sec. 4. NEW SECTION. 537C.4 DEFINITIONS.

24 As used in this chapter, unless the context otherwise
25 requires:

26 1. "Applicant" means a person who applies for registration
27 as a facilitator of refund anticipation loans or refund
28 anticipation checks.

29 2. "Consumer" means any individual who is solicited for,
30 applies for, or receives the proceeds of a refund anticipation
31 loan or refund anticipation check.

32 3. "Creditor" means any person who makes a refund
33 anticipation loan or who takes an assignment of a refund
34 anticipation loan.

35 4. "Facilitator" means a person who does any of the

1 following:

2 a. Solicits the execution of, processes, receives, or
3 accepts an application or agreement for a refund anticipation
4 loan or refund anticipation check.

5 b. In any manner participates in the making of a refund
6 anticipation loan or refund anticipation check.

7 5. "Market" or "advertise" means to produce, distribute,
8 broadcast, or otherwise display or have displayed written
9 materials, oral statements, or visual materials describing a
10 facilitator's products and services.

11 6. "Person" means an individual, a firm, a partnership, an
12 association, a corporation, or another entity.

13 7. "Refund anticipation check" means a check or other
14 payment mechanism that meets all of the following conditions:

15 a. Represents the proceeds of the consumer's tax refund.

16 b. Was issued by a depository institution or by a person
17 that is to receive a direct deposit of the consumer's tax
18 refund or tax credits.

19 c. For which the consumer has paid a fee or other
20 consideration.

21 8. "Refund anticipation loan" means a loan that is secured
22 by or that the creditor arranges to be repaid directly or
23 indirectly from the proceeds of the consumer's income tax
24 refund or tax credits. "Refund anticipation loan" also
25 includes any sale, assignment, or purchase of a consumer's tax
26 refund at a discount or for a fee, whether or not the consumer
27 is required to repay the buyer or assignee if the internal
28 revenue service denies or reduces the consumer's tax refund.

29 9. "Refund anticipation loan fee" means the charges, fees,
30 or other consideration charged or imposed directly or
31 indirectly by a creditor or facilitator for the making of, or
32 in connection with, a refund anticipation loan. "Refund
33 anticipation loan fee" includes any charge, fee, or other
34 consideration for a deposit account, if the deposit account is
35 used for receipt of the consumer's tax refund to repay the

1 amount owed on the loan. "Refund anticipation loan fee" does
2 not include any charge, fee, or other consideration usually
3 charged or imposed by a facilitator in the ordinary course of
4 business, such as fees for tax return preparation or fees for
5 electronic filing of tax returns, if the same fees in the same
6 amounts are charged to the facilitator's customers who do not
7 receive refund anticipation loans or refund anticipation
8 checks.

9 10. "Refund anticipation loan interest rate" means the
10 interest rate for a refund anticipation loan calculated as
11 follows:

12 a. The total amount of refund anticipation loan fees
13 divided by the amount of the loan minus any refund
14 anticipation loan fees, then divided by the number of days in
15 the loan term, then multiplied by three hundred sixty-five and
16 expressed as a percentage.

17 b. If a deposit account is used, the maturity of the loan
18 for the purpose of determining the number of days in the loan
19 term shall be deemed to be the estimated date when the tax
20 refund will be deposited in the deposit account. If no
21 deposit account is used for the repayment of the loan, the
22 maturity of the loan shall be deemed to be the estimated date
23 when the tax refund is received by the creditor.

24 11. "Registrant" means a person who is registered as a
25 facilitator of refund anticipation loans or refund
26 anticipation checks under this chapter.

27 12. "Superintendent" means the superintendent of banking.

28 Sec. 5. NEW SECTION. 537C.5 REGISTRATION AND BOND
29 REQUIREMENTS.

30 1. A person shall not solicit the execution of, process,
31 receive, or accept an application or agreement for a refund
32 anticipation loan or refund anticipation check without first
33 being registered with the superintendent and posting a bond in
34 accordance with this chapter.

35 2. A facilitator shall post a bond in the amount of one

1 hundred thousand dollars per office location, which shall
2 continue in effect for five years after the facilitator ceases
3 operation in the state. Such bond must be available to pay
4 damages and penalties to consumers harmed by any violation of
5 this chapter.

6 3. This section does not apply to a person doing business
7 as a bank, savings and loan association, or credit union,
8 under the laws of the United States or of this state.

9 Sec. 6. NEW SECTION. 537C.6 REGISTRATION AND RENEWAL.

10 1. a. An application to become registered as a
11 facilitator shall be in writing, under oath, and in a form
12 prescribed by the superintendent. The application shall
13 contain all information prescribed by the superintendent. An
14 application for registration shall be accompanied by a fee,
15 payable to the superintendent in an amount established by
16 rule, for each office where the applicant intends to
17 facilitate refund anticipation loans or refund anticipation
18 checks.

19 b. Upon the filing of an application for registration, if
20 the superintendent finds that the responsibility and general
21 fitness of the applicant are such as to command the confidence
22 of the community and to warrant belief that the business of
23 facilitating refund anticipation loans or refund anticipation
24 checks will be operated within the purposes of this chapter,
25 the superintendent shall register the applicant and shall
26 issue and transmit to the applicant a certificate attesting to
27 the registration. If the superintendent does not so find, the
28 superintendent shall not register the applicant and shall
29 notify the applicant of the reasons for the denial.

30 c. Upon receipt of a certificate of registration, the
31 applicant is registered under this chapter and may engage in
32 the business of facilitating refund anticipation loans and
33 refund anticipation checks at the offices identified on the
34 application for registration.

35 2. a. Each registration as a facilitator of refund

1 anticipation loans and refund anticipation checks shall expire
2 on December 31 following the date it was issued, unless it is
3 renewed for the succeeding year. Before the registration
4 expires, the registrant may renew the registration by filing
5 with the superintendent an application for renewal in the form
6 and containing all information prescribed by the
7 superintendent. Each application for renewal of registration
8 shall be accompanied by a fee in an amount established by rule
9 for each office where the registrant intends to facilitate
10 refund anticipation loans or refund anticipation checks during
11 the succeeding year.

12 b. Upon receipt of an application for renewal of
13 registration, the superintendent shall renew the registration
14 unless the superintendent finds that the registrant has
15 violated this chapter or determines that the fitness of the
16 registrant or the operations of the registrant would not
17 support registration of the facilitator under subsection 1.
18 If the superintendent makes such a finding or determination,
19 the superintendent shall so notify the registrant, stating the
20 reasons for the determination.

21 3. A registrant shall prominently display a certificate
22 issued under this chapter in each place of business in the
23 state where the registrant facilitates the making of refund
24 anticipation loans or refund anticipation checks.

25 4. Within five days of receipt of the superintendent's
26 notice of denial of registration or renewal, as required by
27 subsections 1 and 2, an applicant may make a written request
28 to the superintendent for a hearing. The hearing before the
29 superintendent shall be an informal hearing and shall be held
30 with reasonable promptness.

31 Sec. 7. NEW SECTION. 537C.7 FEE SCHEDULE AND
32 DISCLOSURES.

33 1. At each place of business, a facilitator shall display
34 a schedule showing the current fees for refund anticipation
35 loans, for refund anticipation checks, and for the electronic

1 filing of the consumer's tax return.

2 2. A facilitator shall display on each fee schedule
3 examples of the refund anticipation loan interest rates for
4 refund anticipation loans of two hundred dollars, five hundred
5 dollars, one thousand dollars, one thousand five hundred
6 dollars, two thousand dollars, and five thousand dollars.

7 3. A facilitator shall also prominently display on each
8 fee schedule a legend, centered, in bold, capital letters, and
9 in one-inch letters stating:

10 "NOTICE CONCERNING

11 REFUND ANTICIPATION LOANS

12 When you take out a refund anticipation loan, you are
13 borrowing money against your tax refund. If your tax refund
14 is less than expected, you must still repay the entire amount
15 of the loan. If your refund is delayed, you may have to pay
16 additional costs. YOU CAN GET YOUR REFUND IN ABOUT 10 DAYS
17 WITHOUT GETTING A LOAN. You can have your tax return filed
18 electronically and your refund direct deposited into your own
19 bank account without obtaining a loan or paying fees for an
20 extra product."

21 4. The postings required by this section shall be made in
22 no less than twenty-eight point type on a document measuring
23 no less than sixteen inches by twenty inches. The postings
24 shall be displayed in a prominent place at each place of
25 business where the facilitator is making refund anticipation
26 loans.

27 5. A facilitator shall not make a refund anticipation loan
28 or refund anticipation check unless the following requirements
29 are met:

30 a. The disclosures required by this section are displayed.

31 b. The fee actually charged for a refund anticipation loan
32 or refund anticipation check is the same as the fee displayed
33 on the schedule.

34 c. For refund anticipation loans, the refund anticipation
35 loan interest rate does not exceed twenty-one percent per

1 year.

2 Sec. 8. NEW SECTION. 537C.8 REQUIRED DISCLOSURES.

3 When a consumer applies for a refund anticipation loan or
4 check, the facilitator or creditor shall disclose to the
5 consumer on a form separate from the application in fourteen
6 point type, all of the following unless otherwise noted:

7 1. The fee for the refund anticipation loan or refund
8 anticipation check.

9 2. The fee for electronic filing of a tax return.

10 3. The time within which the proceeds of the refund
11 anticipation loan or check will be paid to the consumer if the
12 loan or check is approved.

13 4. For refund anticipation loans, a legend, centered, in
14 bold, capital letters, and in eighteen point type stating:

15 "NOTICE

16 This is a loan. This loan is borrowing money against your
17 tax refund. If your tax refund is less than expected, you
18 must still repay the entire amount of the loan. If your
19 refund is delayed, you may have to pay additional costs. YOU
20 CAN GET YOUR REFUND IN ABOUT 10 DAYS WITHOUT GETTING THIS
21 LOAN. You can have your tax return filed electronically and
22 your refund direct deposited into your own bank account
23 without obtaining a loan or other paid product."

24 5. For refund anticipation loans, the refund anticipation
25 loan interest rate.

26 6. For refund anticipation checks, a legend, centered, in
27 bold, capital letters, and in eighteen point type stating:

28 "NOTICE

29 You are paying [amount of refund anticipation check fee] to
30 get your refund check through [name of issuer of refund
31 anticipation check]. YOU CAN AVOID THIS FEE AND STILL RECEIVE
32 YOUR REFUND IN ABOUT 10 DAYS BY HAVING THE IRS DIRECT DEPOSIT
33 YOUR REFUND INTO YOUR OWN BANK ACCOUNT. You can also wait for
34 the IRS to mail you a check."

35 Sec. 9. NEW SECTION. 537C.9 REQUIREMENTS.

1 A person who makes or facilitates a refund anticipation
2 loan or refund anticipation check shall do all of the
3 following:

4 1. Promptly, after a consumer applies for a loan or check,
5 arrange such loan or check, or inform the consumer that the
6 application is rejected.

7 2. Prior to consummation of the loan or check transaction,
8 provide to the consumer in a form that can be kept by the
9 consumer:

10 a. A copy of the completed loan or check application and
11 agreement.

12 b. The disclosures required by section 537C.8 in English
13 and in the language in which the loan was negotiated.

14 c. For refund anticipation loans, the disclosures required
15 by the Truth-in-Lending Act as defined in section 537.1302.

16 Sec. 10. NEW SECTION. 537C.10 PROHIBITED ACTIVITIES.

17 A person shall not, in the making or facilitating of a
18 refund anticipation loan or refund anticipation check, do any
19 of the following:

20 1. Engage in unfair or deceptive acts or practices,
21 including misrepresenting a fact or condition of a loan or
22 check or making any oral statements contradicting any of the
23 information required to be disclosed under this chapter. A
24 facilitator that violates section 714.16 violates this
25 chapter.

26 2. Fail to comply with any provision of this chapter. Any
27 violation of this chapter constitutes a violation of section
28 714.16.

29 3. Threaten to take any action that is prohibited by this
30 chapter or by any other law, or that the person does not
31 actually intend to take.

32 4. Make or facilitate a refund anticipation loan for which
33 the refund anticipation loan interest rate is greater than
34 twenty-one percent per year. Any refund anticipation loan for
35 which the refund anticipation loan interest rate exceeds

1 twenty-one percent per year is void ab initio.

2 5. Directly or indirectly charge, or arrange for the
3 charging of, any interest, fee, or charge related to a refund
4 anticipation loan or refund anticipation check, other than
5 those specifically authorized by this chapter. Charges for
6 insurance, attorney fees or other collection costs, and check
7 cashing fees are prohibited.

8 6. Include any of the following provisions in any document
9 provided or signed in connection with a refund anticipation
10 loan or refund anticipation check, including the loan
11 application or agreement:

12 a. A hold harmless clause.

13 b. A confession of judgment clause.

14 c. A waiver of the right to a jury trial, if applicable,
15 in any action brought by or against the consumer.

16 d. Any assignment of or order for payment of wages or
17 other compensation for services.

18 e. A provision in which the consumer agrees not to assert
19 any claim or defense arising out of the agreement, or to seek
20 any remedies pursuant to section 537C.13.

21 f. A waiver of any provision of this chapter. Any such
22 waiver shall be deemed null, void, and of no effect.

23 g. A waiver of the right to injunctive, declaratory, other
24 equitable relief, or relief on a classwide basis.

25 h. A provision requiring that any aspect of a resolution
26 of a dispute between the parties to the agreement be kept
27 confidential. This provision shall not affect the right of
28 the parties to agree that certain specified information is a
29 trade secret or otherwise confidential or to later agree,
30 after the dispute arises, to keep a resolution confidential.

31 7. Take or arrange for a creditor to take a security
32 interest in any property of the consumer other than the
33 proceeds of the consumer's tax refund to secure payment of a
34 refund anticipation loan.

35 8. Directly or indirectly, engage in the collection of an

1 outstanding or delinquent refund anticipation loan for any
2 creditor or assignee. A refund anticipation loan or refund
3 anticipation check application or agreement shall not contain
4 a provision permitting the creditor to repay, by offset or
5 other means, an outstanding or delinquent refund anticipation
6 loan for that creditor or any creditor from the proceeds of
7 the consumer's tax refund.

8 9. Facilitate, refer, or solicit consumers on behalf of a
9 third party engaged in check cashing for a fee, or permit
10 third-party check cashing for a fee in any place of business
11 identified on the application for registration.

12 10. Facilitate any loan that is secured by or that the
13 creditor arranges to be repaid directly from the proceeds of
14 the consumer's state tax refund from the treasurer of state.

15 11. Make a misrepresentation of fact in obtaining or
16 attempting to obtain a registration as a facilitator.

17 12. Engage in any other action prohibited by rules
18 promulgated by the superintendent.

19 Sec. 11. NEW SECTION. 537C.11 ADMINISTRATIVE REMEDIES.

20 1. Whenever the superintendent believes or has notice that
21 any action of a facilitator may be in violation of this
22 chapter or the rules adopted pursuant to this chapter, or that
23 the facilitator has engaged in an unfair or deceptive act or
24 practice, the superintendent shall give reasonable notice to
25 the facilitator of the suspected violation or unfair or
26 deceptive act or practice, and an opportunity for the
27 facilitator to be heard. If, following the hearing, the
28 superintendent finds that an action of the facilitator is in
29 violation of this chapter or the rules adopted thereunder or
30 that the facilitator has engaged in an unfair or deceptive act
31 or practice, the superintendent shall order the facilitator to
32 cease and desist from the action. The superintendent may make
33 investigations, subpoena witnesses, and require audits and
34 reports, in preparation for such hearings, and shall make
35 findings of fact and conclusions of law. All hearings shall

1 be open to the public.

2 2. If a facilitator continues to engage in an action in
3 violation of the superintendent's order to cease and desist
4 from the action, the facilitator shall be subject to a penalty
5 of one thousand dollars for each action it takes in violation
6 of the superintendent's order.

7 3. After notice and hearing, and upon a finding that a
8 registrant has engaged in a course of conduct that is in
9 violation of this chapter or the rules adopted thereunder, or
10 continued to engage in an action in violation of a cease and
11 desist order of the superintendent that has not been stayed
12 upon application of the registrant, the superintendent may
13 revoke the registration of the registrant temporarily or
14 permanently at the discretion of the superintendent. A
15 revocation, suspension, or surrender of any registration shall
16 not relieve the registrant from civil or criminal liability
17 for acts committed prior to the revocation, suspension, or
18 surrender.

19 Sec. 12. NEW SECTION. 537C.12 COMPLAINTS.

20 The superintendent shall maintain a list of registrants
21 which shall be available to interested persons and the public.
22 The superintendent shall maintain a toll-free telephone number
23 for consumers to obtain information about registrants and
24 complaint forms. The superintendent shall establish a
25 complaint process whereby an aggrieved consumer or any member
26 of the public may file a complaint against a registrant or
27 nonregistrant who violates any provision of this chapter. All
28 complaints shall be considered public with the exception of
29 the complainant's name, address, or other personal identifying
30 information. The superintendent shall hold a hearing pursuant
31 section 537C.11 upon the request of a party to the complaint.
32 The superintendent may after such hearing issue cease and
33 desist orders or suspend or revoke a registration as provided
34 in section 537C.11.

35 Sec. 13. NEW SECTION. 537C.13 PRIVATE RIGHT OF ACTION.

1 1. The remedies provided in this section are cumulative
2 and apply to both registrants and persons who fail to
3 register.

4 2. A facilitator who fails to comply with any provision of
5 this chapter is liable to the consumer for all of the
6 following:

7 a. Actual and consequential damages.

8 b. Statutory damages of two thousand dollars adjusted
9 annually to reflect increases in the consumer price index or
10 three times the amount of the refund anticipation loan fee or
11 other unauthorized charge, whichever is greater.

12 c. Reasonable attorney fees and costs.

13 3. Any person may sue for injunctive or other appropriate
14 equitable relief to enforce this chapter.

15 4. A consumer may bring a class action suit to enforce
16 this chapter. In a class action, a facilitator who fails to
17 comply with any provision of this chapter is liable for the
18 damages, fees, and costs described in subsection 2.

19 5. The remedies provided in this section are not intended
20 to be the exclusive remedies available to a consumer nor must
21 the consumer exhaust any administrative remedies provided
22 under this chapter or any other applicable law.

23 Sec. 14. NEW SECTION. 537C.14 RULES.

24 1. The superintendent may adopt rules as necessary to
25 effectuate the purpose of this chapter, to provide for the
26 protection of the borrowing public, and to assist facilitators
27 in interpreting this chapter.

28 2. The superintendent may modify, by rule, the disclosures
29 required in sections 537C.7 and 537C.8 to the extent that a
30 revision of the ten-day estimate for receiving a refund with
31 electronic filing and direct deposit from the internal revenue
32 service is appropriate.

33 3. The superintendent shall establish, by rule, reasonable
34 registration and renewal fees sufficient to offset expenses
35 incurred in the administration of this chapter.

1 Sec. 15. NEW SECTION. 537C.15 ANNUAL REPORTS.

2 On or before July 1, 2006, and each year following, a
3 facilitator shall file an annual report with the
4 superintendent pursuant to procedures that the superintendent
5 shall establish by rule. An annual consolidated report shall
6 be prepared by the superintendent and made available to the
7 public. These reports shall include the following information
8 for the time period of April 15 of the prior year to April 15
9 of the current year:

10 1. The total number and dollar amount of refund
11 anticipation loans facilitated by the facilitator.

12 2. The total number and dollar amount of refund
13 anticipation checks facilitated by the facilitator.

14 3. The average number of days for which refund
15 anticipation loans facilitated by the facilitator were
16 outstanding before being repaid.

17 4. The name and address of any creditor or person for whom
18 the facilitator made refund anticipation loans or refund
19 anticipation checks.

20 5. Any other information required by the superintendent.

21 Sec. 16. NEW SECTION. 537C.16 ADVERTISING AND MARKETING.

22 1. A facilitator shall not market or advertise a refund
23 anticipation loan without including the following language:

24 "[Name of product] is a loan. You can get your refund in
25 about 10 days without a loan or extra fees if you use e-file
26 and direct deposit."

27 For print advertisements, this information shall be in type
28 size one-half as large as the largest type size in the
29 advertisement. For radio and television advertisements, this
30 information shall receive at least seven seconds of airtime.

31 2. A facilitator shall not market or advertise a refund
32 anticipation check without including the following language:

33 "The [name of product] costs [refund anticipation check
34 fee]. You can get your refund in about 10 days without this
35 fee if you use e-file and direct deposit."

1 For print advertisements, this information shall be in type
2 size one-half as large as the largest type size in the
3 advertisement. For radio and television advertisements, this
4 information shall receive at least seven seconds of airtime.

5 EXPLANATION

6 This bill creates a new Code chapter known as the "Iowa
7 Refund Anticipation Loan Act". The Code chapter regulates
8 transactions in which a consumer pays a fee to receive a loan
9 or check in advance or in anticipation of receipt of an IRS
10 tax refund. A person, the facilitator, who makes such loans
11 or checks must register and file annual reports with the
12 superintendent of banking. The superintendent may receive
13 complaints and adopt rules necessary to protect consumers and
14 regulate facilitators. The facilitator must disclose to
15 consumers the fees charged, the loan interest rate, and that a
16 consumer can receive a tax refund in about 10 days without the
17 fees required by such a loan or check. The bill provides
18 penalties against facilitators who fail to comply with the
19 Code chapter. The bill also requires certain disclosures in
20 advertising the availability of a refund anticipation loan or
21 check.

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